United Nations S/2003/355

Security Council

Distr.: General
24 March 2003
English
Original: Spanish

Letter dated 19 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 2 January 2003 (S/2003/25).

The Counter-Terrorism Committee has received the attached third report from Guatemala, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

03-29367 (E) 150403 230403

Annex

Letter dated 17 March 2003 from the Chargé d'affaires a.i. of the Permanent Mission of Guatemala to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I am writing in response to your letter dated 16 December 2002, regarding the questions and comments on the supplementary report of the Government of Guatemala submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001). In this regard, I am pleased to submit herewith to the Committee a third report on the steps taken by the Government of Guatemala to comply with the commitments contained in said resolution (see enclosure).

(*Signed*) José Alberto **Briz**
Deputy Permanent Representative
Chargé d'affaires a.i.

Enclosure

Letter dated 14 March 2003 from the Deputy Minister for Foreign Affairs of Guatemala addressed to the Permanent Representative of Guatemala to the United Nations

[Original: Spanish]

I have the honour to write to you in response to your fax containing the questions and comments of the Counter-Terrorism Committee on the second report submitted by Guatemala pursuant to paragraph 6 of Security Council resolution 1373 (2001).

In that connection, I enclose the requested report, which provides answers to the Committee's questions and comments (see enclosure).

(Signed) Gabriel Aguilera **Peralta**
Deputy Minister for Foreign Affairs

Enclosure

Supplementary questions concerning the second report submitted by Guatemala pursuant to resolution 1373 (2001)*

1.1. The Counter-Terrorism Committee has agreed on further questions and comments for the consideration of the Government of Guatemala with regard to the implementation of the resolution.

1.2. Effective implementation of paragraph 1 requires that the legal obligation to report suspicious transactions imposed on banks and financial institutions should extend to all professions engaged in financial transactions (such as lawyers, accountants) and that they should all be subjected to penalties for non-compliance in order to enable the effective prevention of the financing of terrorism. Could Guatemala please comment on the action it intends to take in this regard.

Articles 18 and 26 of the Act Against the Laundering of Money or Other Assets, Decree No. 67-2001 of the Congress of the Republic, govern the obligation imposed on banks and financial institutions to report unusual or suspicious transactions to the Office of the Controller of Banks.

Likewise, article 2 (a) of that Act provides for criminal proceedings to be brought against any person who, by reason of his or her post, employment, occupation or profession, is obligated to know that sums of money or assets are the proceeds of or have originated in the commission of an offence.

It should also be pointed out that, as of November this year, the Office of the Controller of Banks, through the Special Audit Office (Financial Analysis Unit) has introduced a series of forms designed to identify legal and natural persons, register transactions in excess of US$ 10,000 and report unusual or suspicious transactions.

Those forms are already being used by institutions of the national financial system, in particular banks, financial institutions, savings banks, bureaux de change, market entities (stock market), the Central Bank etc. Based on those forms, a "know your customer" policy is currently being developed and a reporting mechanism for suspicious transactions in the area of asset laundering has been created, which could be used in the future as a basis for the implementation of anti-terrorist measures. Copies of the aforementioned forms are attached.

We believe that it is important to note that those documents will make it possible to investigate transactions from an administrative standpoint with a view to determining whether or not there are grounds for suspicion.

1.3. Effective implementation of this paragraph requires, in accordance with articles 2 and 4 of the International Convention for the Suppression of the Financing of Terrorism, that each State have in place provisions specifically criminalizing the wilful provision or collection, by any means, directly or indirectly, of funds by its nationals, or in its territory, with the intention that the funds should be used to carry out terrorist acts. The acts sought to be criminalized are thus capable of being committed without any specific act of terrorism actually occurring or being attempted, either within or outside the

* Enclosures are with the Secretariat and are available for consultation.

country. Please outline the provisions of Guatemalan criminal law that criminalize the offences set forth in article 2 of the Convention for the Suppression of the Financing of Terrorism.

With regard to paragraph 1.3., Guatemala has ratified the International Convention for the Suppression of the Financing of Terrorism and therefore recognizes it as law.

Consequently, action is being taken to strengthen criminal law through the formulation of a draft act dealing specifically with counter-terrorism.

The introductory section of article 12 of the draft act states: "Anyone who commits the offence of financing terrorism shall be sentenced to 20 to 30 years' imprisonment and a fine equal to the sum used in the commission of the offence, without prejudice to the applicable civil liabilities".

1.4. In the context of subparagraph 1 (c) of the resolution, please outline the procedure that leads to the freezing of terrorist funds upon request of foreign authorities.

The request must be made through the diplomatic channel and the judge presiding over the relevant legal proceedings must make a ruling which makes it possible to order the precautionary measure of freezing of funds, provided that the definition of the crime in the requesting State corresponds with that laid down in article 391 of the Guatemalan Penal Code, Decree No. 17-73 of the Congress of the Republic.

1.5. Effective implementation of paragraph 1 of the resolution also requires the existence of legal provisions or administrative measures that ensure that funds and other economic resources collected by non-profit organizations (e.g. religious, charitable or cultural organizations) are not diverted for other than the stated purposes, particularly for financing of terrorism. Please explain whether such provisions or measures are in place in Guatemala and, if not, how Guatemala proposes to monitor the use of funds etc. by non-profit organizations.

Under article 19 (d) of the Act against the Laundering of Money or Other Assets, Legislative Decree No. 67-2001, all financial entities subject to the monitoring and supervision of the Office of the Controller of Banks must implement specific measures to know and identify customers. In that connection, as of 1 November 2002, the entire financial sector has been obliged to identify customers who make transactions, thereby allowing, in accordance with the established warning signs, the Office of the Controller of Banks, through the Special Audit Office, to be notified of any unusual or suspicious transactions in accordance with the account monitoring system.

Article 13 of the draft counter-terrorism act defines the offence in the specific case of terrorism as follows:

> "Any juridical person with non-profit status which, operating from national territory, collects or procures funds from overseas by any means, simulates or engages in social functions or is engaged in such functions but misappropriates or uses funds with a view to supporting or financing terrorism in Guatemala, shall be sentenced to a fine equal to the sum collected or misappropriated.

Directors, managers, administrators, officials or employees of the responsible juridical person who commit the offence in the course of their duties shall be sentenced to 25 to 50 years' imprisonment".

1.6. Please elaborate on how the draft amendments to Decree-Law No. 39-89 on arms control will be conducive to the implementation of the obligation to eliminate the supply of weapons to terrorists, as required by subparagraph 2 (a) of the resolution.

The acquisition of weapons in Guatemala is governed by the Arms and Ammunition Act, Decree-Law No. 39-89, and its Regulations. Article 18 of the Act establishes the functions of the Department of Arms and Munitions Control, as follows:

(a) Authorizing, registering and controlling the importation, manufacture, sale, donation, exportation, warehousing, de-warehousing, transport and bearing of weapons;

(b) Authorizing, registering and controlling the importation, manufacture, exportation, warehousing, de-warehousing and transport of ammunition;

(c) Authorizing and controlling the operation of armouries, shooting ranges and ammunition reconditioning machines;

(d) Registering and controlling the possession of arms;

(e) Keeping a registry of the ballistic fingerprints of all firearms;

(f) Keeping a registry of the trademarks of the businesses and sporting associations which sell arms and ammunition;

(g) Carrying out at least every thirty (30) days, or whenever it is deemed necessary, a physical inventory of the stock of firearms and ammunition in commercial establishments and places of deposit;

(h) Inspecting shooting ranges and their record books whenever it is deemed necessary to do so;

(i) Carrying out other functions assigned to it by this Act.

The draft amendments to Decree-Law 39-89 on arms control are still being processed by the legislature and moves are under way to improve that control.

1.7. Please outline the existing or proposed legal provisions that, in addition to articles 371 and 372 of the Guatemalan Penal Code, criminalize the use of Guatemalan territory for the purpose of financing, planning, facilitating or committing terrorist acts against other States or their citizens. Effective implementation of subparagraphs 2 (d) and (e) of the resolution requires that such additional provisions should be incorporated in the penal law of Guatemala.

In November 2002, Guatemala completed a draft anti-terrorist act. Article 5 of that draft act describes the offence of "terrorist groups" and defines the perpetrator of that offence: "Anyone who recruits, organizes, participates or gives support with a view to setting up terrorist groups within national territory in order to commit acts of terrorism in Guatemala and abroad, regardless of the location in which the act is committed, shall be sentenced to 10 to 20 years' imprisonment".

1.8. According to the supplementary report, the Guatemalan Penal Code is applicable to acts which, according to a treaty or agreement, are punishable in Guatemala, even if they were not committed on Guatemalan territory. In cases to which this provision of the Penal Code is not applicable, will Guatemala extradite foreigners and stateless persons who have committed any of the acts listed in subparagraph 2 (e) of the resolution outside its territory, but who are currently in Guatemala, in order to ensure that those persons are brought to justice as required by that subparagraph?

Under article 27 of the Political Constitution of the Republic of Guatemala, extradition is governed by the provisions of international treaties.

The offences listed in subparagraph 2 (e) of resolution 1373 (2001) are those committed by any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts.

The State of Guatemala is able to extradite foreigners and stateless persons who, while on Guatemalan territory, have committed offences which, in accordance with Guatemalan legislation and the international treaties to which it is party, constitute acts of terrorism, provided that extradition agreements between Guatemala and the requesting State are in force and that the provisions of those agreements allow it. This is to ensure that such persons are brought to justice.

1.9. Please list the offences set forth in the 12 international conventions and protocols against terrorism which have already been incorporated into the penal legislation of Guatemala. Please also provide a progress report regarding the establishment of the other offences set forth in those conventions and protocols as criminal offences under Guatemalan law. Copies of the domestic legal provisions would be appreciated.

Guatemala has ratified 10 of the above-mentioned conventions, and their implementation is being taken into consideration in the design of a draft anti-terrorism act and the draft act for the prevention and suppression of the financing of terrorism, by means of which new definitions are being incorporated into domestic criminal legislation.

The internal armed conflict in Guatemala, which lasted for over 36 years, was partly responsible for Chapter IV of the Penal Code containing "offences against public order", which include terrorism and illegal association. Guatemalan penal legislation is therefore in advance as far as legislation addressing such issues is concerned.

The action taken by the Government of Guatemala in respect of each of the conventions is described below:

1. International Convention for the Suppression of the Financing of Terrorism

"Article 2

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraphs (a) or (b).

4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.

5. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;

(c) Contributes to the commission of one or more offences as set forth in paragraph 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or

(ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article."

At present, Guatemala's criminal legislation does not contain specific regulations on the provisions of article 2 of the United Nations Convention for the Suppression of the Financing of Terrorism, which relate to the criminalization of the financing of terrorism.

However, legal analysis reveals that, based on the current provisions of the Penal Code, Decree No. 17-73 of the Congress of the Republic, financing of terrorism may be prosecuted and penalized according to the degree of responsibility for the offence of terrorism, pursuant to articles 36, 37 and 391 of the aforementioned legislation.

Such illegal activity may also be penalized through application of the offence of "illegal armed groups", contained in article 398 of the Penal Code, since economic cooperation falls within its scope.

It should also be pointed out that, pursuant to articles 1 and 2 of the Act against the Laundering of Money or Other Assets, Legislative Decree No. 67-2001 of the Congress of the Republic, the aforementioned offences may also be regarded as underlying the laundering of assets or deriving from that activity, since in Guatemala money-laundering can be defined as the generation of funds from the commission of any offence.

Likewise, the Guatemalan Office of the Controller of Banks is currently reviewing the draft act for the prevention and suppression of the financing of terrorism, which is almost ready to be submitted to the Congress of the Republic. That draft brings together the norms and standards set out in Security Council resolution 1373 (2001), the Convention for the Suppression of the Financing of Terrorism and the eight Special Recommendations of the Financial Action Task Force (FATF). It expressly defines the offence of financing of terrorism and provides for strict penalties involving deprivation of liberty for perpetrators and accomplices. It defines the offence as a crime against humanity, which will facilitate passive and active extradition procedures.

2. International Convention for the Suppression of Terrorist Bombings

"Article 2

1. Any person commits an offence within the meaning of the Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:

(a) With the intent to cause death or serious bodily injury; or

(b) With the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.

2. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1.

3. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 2; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 2; or

(c) In any other way contributes to the commission of one or more offences as set forth in paragraph 1 or 2 by a group of persons acting with a common purpose: such contribution shall be international and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned."

Guatemala's criminal legislation contains definitions that fulfil the requirements of the Convention concerning the commission of the aforementioned offences. The following definition of the offence of malicious destruction is contained in article 284 of the Penal Code, Decree No. 17-73: "Anyone who causes damage by using powerful means of destruction or through flooding, explosion, collapse or demolition of a building commits the offence of malicious destruction. Perpetrators shall be sentenced to 5 to 15 years' imprisonment". Similarly, article 288 governs offences relating to rail disasters and articles 292 to 297 govern attacks against other forms of transport, attacks against the safety of public utilities,

interruption or obstruction of communications and the disabling or obstruction of defences.

Those offences all undermine public safety, in that they can be committed in various ways, inter alia with any explosive object or substance or any other lethal object.

Article 292. Attacks against other forms of transport. Anyone who endangers a means of public transport or impedes or hinders its progress shall be sentenced to one to three years' imprisonment.

If the act results in damage, the perpetrator will be sentenced to two to five years' imprisonment.

Article 293. Wilful disasters. Anyone who wilfully causes any of the disasters listed in the preceding articles of this chapter shall be sentenced to one to three years' imprisonment.

If, as a consequence of those disasters, death or serious injury results to one or more persons, the perpetrator shall be sentenced to two to six years' imprisonment.

Article 294. Attacks against the safety of public utilities. Anyone who endangers the safety of or prevents or hinders the operation of water, light, electrical or other public utilities shall be sentenced to one to five years' imprisonment.

Article 295. Interruption of or interference with communications. Anyone who seeks to undermine the security of telecommunications or postal communications, or who interrupts or interferes with such services in any way shall be sentenced to two to five years' imprisonment.

Article 296. Seizure or destruction of correspondence. Anyone who assaults a mail carrier with the intention of intercepting or stopping mail or of seizing or destroying it shall be sentenced to three to six years' imprisonment.

Article 297. Anyone who, in connection with any disasters, damage or loss provided for in this chapter, removes, conceals or disables installations, materials, tools, equipment or other items intended for defence or rescue operations, or who prevents or hinders the provision of defence or rescue services, shall be sentenced to the same punishment as the perpetrators of the offence in question.

3. Convention on offences and certain other acts committed onboard aircraft

"Chapter I
Scope of the Convention

"Article 1

"1. This Convention shall apply in respect of:

"(a) Offences against penal law;

"(b) Acts which, whether or not they are offences, may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board."

"Chapter IV
Unlawful Seizure of Aircraft

"Article 11

"1. When a person on board has unlawfully committed by force or threat thereof an act of interference, seizure, or other wrongful exercise of control of an aircraft in flight or when such an act is about to be committed, Contracting States shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft."

The said convention has been ratified by Guatemala and is therefore part of the country's legal system. In this regard, title VII of the Penal Code of Guatemala deals with related offences against collective security, including offences against communication and transport means and other public services referred to articles 288 to 300 such as crimes against the safety of maritime, river and air transport; maritime, river and air disasters; crimes against the safety of public utility services; piracy and aircraft hijacking.

Article 288. Creating a risk of railway disaster. The disturbance of railway service in any of the following ways shall be punishable by two to five years' imprisonment:

1. By destroying, damaging or causing the breakdown of a railway line, rolling-stock or railway structure or installation;
2. By placing on the track obstacles that may cause derailing;
3. By transmitting false notice relating to the movement of trains or by interrupting telephone, telegraph or radio communications;
4. By carrying out any other act that might result in a disaster.

Article 289. Railway disaster. In the event that the acts referred to in the preceding article result in a disaster, the person responsible shall be sentenced to 4 to 12 years' imprisonment.

Article 290. Attacks against the safety of maritime, river or air transport. Anyone who endangers his own or someone else's vessel or aircraft or commits any act likely to prevent or hamper maritime, river or air navigation shall be sentenced to two to five years' imprisonment.

Article 291. Maritime, river or air disasters. In the event that the acts referred to in the foregoing article result in shipwreck or the stranding of a vessel or in the fall or destruction of an aircraft, the person responsible shall be sentenced to 4 to 12 years' imprisonment.

Article 292. Attacks against other means of transport. Anyone who endangers, hinders or obstructs any other public transport means shall be sentenced to one to three years' imprisonment.

If the act results in damage, the person responsible shall be sentenced to two to five years' imprisonment.

Article 293. Wilful disasters. Anyone who wilfully causes any of the disasters listed in the preceding articles of this chapter shall be sentenced to one to three years' imprisonment.

If, as a consequence of those disasters, death or serious injury results to one or more persons, the perpetrator shall be sentenced to two to six years' imprisonment.

Article 294. Attacks against the safety of public utilities. Anyone who endangers the safety of or prevents or hinders the operation of water, light, electrical or other public utilities shall be sentenced to one to five years' imprisonment.

Article 295. Interruption of or interference with communications. Anyone who seeks to undermine the safety of telecommunications or postal communications, or who interrupts or interferes with such services in any way shall be sentenced to two to five years' imprisonment.

Article 296. Seizure or destruction of correspondence. Anyone who assaults a mail carrier with the intention of intercepting or stopping mail or of seizing or destroying it shall be sentenced to three to six years' imprisonment.

Article 297. Anyone who, in connection with any disasters, damage or loss provided for in this chapter, removes, conceals, disables installations, materials, tools, equipment or other items intended for defence or rescue operations, or who prevents or hinders the provision of defence or rescue services, shall be sentenced to the same punishment as the perpetrators of the offence in question.

Article 298. Abandonment of transport service. A driver, captain, pilot or engineer of a railroad train, ship, aircraft or any other means of public transport who abandons his post before the completion of the corresponding trip, voyage or flight shall be sentenced to 1 month's to 1 year's imprisonment and a fine of 20 to 2,000 quetzales unless the act constitutes another offence punishable by a greater penalty.

Article 299 of the Penal Code of Guatemala provides as follows:

"Piracy. Anyone who commits, on the sea, in lakes or in navigable rivers, any act of depredation or violence against a vessel or against persons aboard a vessel shall be deemed to have committed the crime of piracy, unless he has been authorized to do so by a belligerent State or the vessel with which he performs such act belongs to the navy of a recognized State.

The following persons shall also be deemed to have committed the crime of piracy:

1. Anyone who seizes any vessel or anything belonging to the crew of such vessel by fraud or violence committed against its commander;

2. Anyone who hands over to pirates a vessel, its cargo or anything belonging to its crew;

3. Anyone who, using violence, opposes the defence, by the commander or the crew, of a vessel which is the target of piracy;

5. Anyone who, operating from national territory, traffics with or provides assistance to pirates.

Anyone guilty of piracy shall be sentenced to three to five years' imprisonment." In addition, article 300 of the Penal Code provides as follows: "The provisions contained in the preceding article shall apply to anyone who commits hijacking against aircraft or persons therein."

Article 300. Aircraft hijacking. The provisions contained in the preceding article shall apply to anyone who commits hijacking against aircraft or persons therein.

4. Convention for the suppression of unlawful seizure of aircraft

"Article 1

"Any person who on board an aircraft in flight:

"(a) Unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act, or

"(b) Is an accomplice of a person who performs or attempts to perform any such act commits an offence (hereinafter referred to as 'the offence')."

The said convention has been ratified by Guatemala and is therefore part of the country's legal system. In this regard, title VII of the Penal Code of Guatemala deals with related offences against collective security, including offences against communication and transport means and other public services. Chapter III describes the offences that relate to piracy and aircraft hijacking.

Regarding the definition of an accomplice, Guatemalan penal law defines as an offence, in general terms, the participation of an accomplice with a view to the perpetration of any offence to which penal sanctions apply. More specifically, the rules in question are contained in article 37 of the Penal Code, which states the following:

"Accomplices are: (1) persons who incite or encourage others in their determination to commit an offence; (2) persons who promise to assist or cooperate after the commission of the offence; (3) persons who provide information or supply the appropriate means for the commission of the offence; (4) persons who serve as links or act as intermediaries between participants in order to arrange their participation in the offence."

Concerning the application of penalties to accomplices, it should be pointed out that the treatment given is less drastic, inasmuch as article 63 of the Penal Code provides that in respect of them the penalty specified in the Code for the perpetrators of an offence committed shall be imposed, but shall be reduced by one third.

5. Convention for the suppression of unlawful acts against the safety of civil aviation

"Article 1

"1. Any person commits an offence if he unlawfully and intentionally:

"(a) Performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or

"(b) Destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or

"(c) Places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or

"(d) Destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or

"(e) Communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight.

"2. Any person also commits an offence if he:

"(a) Attempts to commit any of the offences mentioned in paragraph 1 of this Article; or

"(b) Is an accomplice of a person who commits or attempts to commit any such offence."

The said convention has been ratified by Guatemala and is therefore part of the country's legal system. In this regard, title VII of the Penal Code of Guatemala deals with related offences against collective security, including offences against communication and transport means and other public services. Chapters I, II and III describe the offences that relate to destruction, piracy and aircraft hijacking.

Article 284. Malicious destruction. Anyone who causes damage by using powerful means of destruction or through flooding, explosion, collapse or demolition of a building commits the offence of malicious destruction.

Perpetrators shall be sentenced to 4 to 12 years' imprisonment.

Article 288. Creating a risk of railway disaster. The disturbance of railway service in any of the following ways shall be punishable by two to five years' imprisonment:

1. By destroying, damaging or causing the breakdown of a railway line, rolling-stock or railway structure or installation;

2. By placing on the track obstacles that may cause derailing;

3. By transmitting false notice relating to the movement of trains or by interrupting telephone, telegraph or radio communications;

4. By carrying out any other act that might result in a disaster.

Article 289. Railway disaster. In the event that the acts referred to in the preceding article result in a disaster, the person responsible shall be sentenced to 4 to 12 years' imprisonment.

Article 290. Attacks against the safety of maritime, river or air transport. Anyone who endangers his own or someone else's vessel or aircraft or commits any act likely to prevent or hamper maritime, river or air navigation shall be sentenced to two to five years' imprisonment.

Article 291. Maritime, river or air disasters. In the event that the acts referred to in the foregoing article result in shipwreck or the stranding of a vessel or in the fall or destruction of an aircraft, the person responsible shall be sentenced to 4 to 12 years' imprisonment.

Article 292. Attacks against other means of transport. Anyone who endangers, hinders or obstructs any other public transport means shall be sentenced to one to three years' imprisonment.

If the act results in damage, the perpetrator will be sentenced to two to five years' imprisonment.

Article 293. Wilful disasters. Anyone who wilfully causes any of the disasters listed in the preceding articles of this chapter shall be sentenced to one to three years' imprisonment.

If, as a consequence of those disasters, death or serious injury results to one or more persons, the perpetrator shall be sentenced to two to six years' imprisonment.

Article 294. Attacks against the safety of public utilities. Anyone who endangers the safety of or prevents or hinders the operation of water, light, electrical or other public utilities shall be sentenced to one to five years' imprisonment.

Article 295. Interruption of or interference with communications. Anyone who seeks to undermine the safety of telecommunications or postal communications, or who interrupts or interferes with such services in any way shall be sentenced to two to five years' imprisonment.

Article 296. Seizure or destruction of correspondence. Anyone who assaults a mail carrier with the intention of intercepting or stopping mail or of seizing or destroying it shall be sentenced to three to six years' imprisonment.

Article 297. Anyone who, in connection with any disasters, damage or loss provided for in this chapter, removes, conceals or disables installations, materials, tools, equipment or other items intended for defence or rescue operations, or who prevents or hinders the provision of defence or rescue services, shall be sentenced to the same punishment as the perpetrators of the offence in question.

Article 298. Abandonment of transport service. A driver, captain, pilot or engineer of a railroad train, ship, aircraft or any other means of public transport who abandons his post before the completion of the corresponding trip, voyage or flight shall be sentenced to 1 month's to 1 year's imprisonment and a fine of 20 to 2,000 quetzales unless the act constitutes another offence punishable by a greater penalty.

Article 299 of the Penal Code of Guatemala provides as follows:

"Piracy. Anyone who commits, on the sea, in lakes or in navigable rivers, any act of depredation or violence against a vessel or against persons aboard a vessel shall be deemed to have committed the crime of piracy, unless he has been authorized to do so by a belligerent State or the vessel with which he performs such act belongs to the navy of a recognized State.

The following persons shall also be deemed to have committed the crime of piracy:

1. Anyone who seizes any vessel or anything belonging to the crew of such vessel by fraud or violence committed against its commander;

2. Anyone who hands over to pirates a vessel, its cargo or anything belonging to its crew;

3. Anyone who, using violence, opposes the defence, by the commander or the crew, of a vessel which is the target of piracy;

5. Anyone who, operating from national territory, traffics with or provides assistance to pirates.

Anyone guilty of piracy shall be sentenced to 3 to 5 years' imprisonment." In addition, article 300 of the Penal Code provides as follows: "The provisions contained in the preceding article shall apply to anyone who commits hijacking against aircraft or persons therein."

Article 300. Aircraft hijacking. The provisions contained in the preceding article shall apply to anyone who commits hijacking against aircraft or persons therein.

6. Protocol for the suppression of unlawful acts of violence at airports serving international civil aviation, supplementary to the convention for the suppression of unlawful acts against the safety of civil aviation

"**Article II**

"1. In Article 1 of the Convention, the following shall be added as new paragraph 1 bis:

"1 bis. Any person commits an offence if he unlawfully and intentionally, using any device, substance or weapon:

"(a) Performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or

"(b) Destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport, if such an act endangers or is likely to endanger safety at that airport."

The said protocol has been ratified by Guatemala and is therefore part of the country's legal system. In this regard, book two, title VII of the Penal Code of Guatemala deals with related offences against the life and integrity of persons. Chapters I, II and V include the crimes of homicide and injury (arts. 123 to 150). Matters relating to the destruction of facilities are contained in articles 284, 290, 291, 299 and 300 of the Penal Code.

Chapter I
Simple homicide

Article 123. Homicide. Whoever kills any person commits homicide. Any person guilty of homicide shall be sentenced to 15 to 40 years' imprisonment.

Article 124. Manslaughter committed in the heat of violent emotion. Anyone who kills in the heat of violent emotion shall be sentenced to 2 to 8 years' imprisonment.

Article 125. Manslaughter committed during a brawl. Whenever a brawl among a number of persons assaulting one another in a confused and riotous manner results in the death of one or more persons and the perpetrator thereof is not known but those who have caused serious injuries are known, the latter shall be sentenced to 6 to 12 years' imprisonment.

If it is not known who caused the injuries, all the participants shall be sentenced to 2 to 6 years' imprisonment.

Article 126. Preterintentional manslaughter.* Any person who commits preterintentional manslaughter shall be sentenced to 2 to 10 years' imprisonment.

Article 127. Involuntary manslaughter. Any person who commits involuntary manslaughter shall be sentenced to 2 to 5 years' imprisonment. If the act also causes injuries to other persons or results in the death of more than one person, the penalty shall be 3 to 8 years' imprisonment.

If the offence is committed by a person while driving a vehicle in a state of drunkenness, under the effect of drugs or agents which affect the driver's personality or in a situation which impairs or reduces his mental, volitional or physical capacity, the person responsible shall be given double the penalty that applies where no such circumstances exist.

If the event is caused by pilots of collective transport, the applicable penalty shall be increased by one third.

Article 128. Inducement to or assistance in committing suicide. Anyone who induces another to commit suicide or renders him assistance in doing so shall, if death ensues, be sentenced to 5 to 15 years' imprisonment.

If the suicide does not occur, but the attempt to commit it produces any of the injuries referred to in articles 146 or 147 of this Code, the prison term shall be 6 months' to 3 years.

Article 129. Infanticide. A mother who, driven by motives intimately connected with her condition which produce manifest psychic changes, kills her child during its birth or before it has lived three days shall be sentenced to 2 to 8 years' imprisonment.

Article 130. Simulation of death. Anyone who maliciously pretends to be dead or who, having knowledge of the existence of an action instituted on the occasion or by reason of his death, fails to show himself, shall be sentenced to 1 to 5 years' imprisonment.

Chapter II
Aggravated homicide

Article 131. Parricide. Anyone who, while aware of the bond, kills any ascendant or descendant, his spouse or partner shall be punished as a parricide by 25 to 50 years' imprisonment. The death penalty shall be imposed in lieu of the maximum term of imprisonment if the circumstances of the act, the way in which it was carried out or the motivation behind it reveal that the perpetrator is especially dangerous.

Those not sentenced to death for this crime shall not be granted a reduction of penalty on any ground whatsoever.

Article 132. Murder. Murder is committed by anyone who kills a person: (1) with treachery; (2) for payment, reward, promise or profit; (3) by using or

* A more serious form of involuntary manslaughter in which the perpetrator intends to commit a crime, but the consequences of his act go beyond his intention, resulting in death. — Translator.

causing flooding, fire, poisoning, explosion, collapse or demolition of a building or other means that may occasion major destruction; (4) with known premeditation; (5) with cruelty; (6) in an impulse of brutal perversity; (7) in order to prepare, facilitate, complete or conceal another offence or ensure the results thereof or immunity for himself or his partners therein or because he has not obtained the result intended when committing such other punishable act; (8) for terrorist purposes or in carrying out terrorist activities.

A murderer shall be sentenced to 25 to 50 years' imprisonment; the death penalty shall, however, be imposed in lieu of the maximum term of imprisonment if the circumstances of the act, the way in which it was carried it out or the motivation behind it reveal that the perpetrator is especially dangerous.

Those not sentenced to death for this crime shall not be granted a reduction of penalty on any ground whatsoever.

Article 132 bis. Extrajudicial execution. Anyone who, on the order or with the authorization, support or acquiescence of State authorities, in any manner deprives one or more persons of life on political grounds shall be deemed to have committed the crime of extrajudicial execution; similarly, any public employee or official, whether a member of the State security forces or not, who orders, authorizes, supports or acquiesces in the commission of such acts shall be deemed to have committed the said crime.

The deprivation of one or more persons of life, even where no political motive is involved, when committed by members of the State security forces in the exercise of their functions, constitutes extrajudicial execution if such members act arbitrarily or with abuse or excess of force. Extrajudicial execution is also committed by members of groups or bands organized for terrorist, revolutionary or subversive purposes or any other criminal purpose whenever their actions result in the death of one or more persons.

Anyone guilty of extrajudicial execution shall be sentenced to 25 to 30 years' imprisonment.

The death penalty shall be imposed in lieu of the maximum term of imprisonment in either of the following cases:

(a) If the victim is under 12 years or over 60 years of age;

(b) If the circumstances of the act or the occasion, the way in which it was carried out or the motivation behind it reveal that the perpetrator is especially dangerous.

Chapter V
Assault and battery

Article 144. Definition. Anyone who, without intent to kill, causes bodily or mental harm to another, commits the crime of assault and battery.

Article 145. Specific injuries. Anyone who intentionally castrates, sterilizes, blinds or mutilates another person or persons shall be sentenced to 5 to 12 years' imprisonment.

Article 146. Extremely severe injury. Anyone who causes another to suffer extremely severe injury shall be sentenced to 3 to 10 years' imprisonment.

An extremely severe injury is one that produces any of the following results: (1) definitely or probably incurable mental or bodily disease; (2) permanent work disability; (3) loss of a principal member or of the faculty of speech; (4) loss of an organ or a sense; (5) inability to procreate or conceive.

Article 147. Severe injury. Anyone who causes another to suffer severe injury shall be sentenced to 2 to 8 years' imprisonment.

A severe injury is one that produces any of the following results: (1) Permanent impairment of the function of an organ, a principal member or a sense; (2) permanent abnormality in the use of the faculty of speech; (3) work disability for more than a month; (4) permanent disfigurement of the face.

Article 148. Mild injuries. Anyone who causes another to suffer mild injury shall be sentenced to 6 months' to 3 years' imprisonment.

A mild injury is one that produces in the victim of the offence any of the following results: (1) Work disability or sickness for more than 10 but not more than 30 days; (2) loss or loss of use of a non-principal member; (3) a visible permanent scar on the face.

Article 149. Injury during a brawl. If injuries are caused during a brawl and it is not possible to determine the person or person who caused them, the penalty applicable to the injuries, reduced by one third, shall be imposed on those who have exercised any violence against the person of the victim of the offence.

Article 150. Wrongful injury. Anyone who wrongfully causes injury, even where there is more than one victim of the same act, shall be sentenced to 3 months' to 2 years' imprisonment.

Article 284. Malicious destruction. Anyone who causes damage by using powerful means of destruction or through flooding, explosion, collapse or demolition of a building commits the offence of malicious destruction.

Perpetrators shall be sentenced to 4 to 12 years' imprisonment.

Article 290. Attacks against the safety of maritime, river or air transport. Anyone who endangers his own or someone else's vessel or aircraft or commits any act likely to prevent or hamper maritime, river or air navigation shall be sentenced to 2 to 5 years' imprisonment.

Article 291. Maritime, river or air disasters. In the event that the acts referred to in the foregoing article result in shipwreck or the stranding of a vessel or in the fall or destruction of an aircraft, the person responsible shall be sentenced to 3 to 12 years' imprisonment.

Article 299 of the Penal Code of Guatemala provides as follows:

"Piracy. Anyone who commits, on the sea, in lakes or in navigable rivers, any act of depredation or violence against a vessel or against persons aboard a vessel shall be deemed to have committed the crime of piracy, unless he has been authorized to do so by a belligerent State or the vessel with which he performs such act belongs to the navy of a recognized State.

The following persons shall also be deemed to have committed the crime of piracy:

1. Anyone who seizes any vessel or anything belonging to the crew of such vessel by fraud or violence committed against its commander;

2. Anyone who hands over to pirates a vessel, its cargo or anything belonging to its crew;

3. Anyone who, using violence, opposes the defence, by the commander or the crew, of a vessel which is the target of piracy;

5. Anyone who, operating from national territory, traffics with or provides assistance to pirates.

Anyone guilty of piracy shall be sentenced to 3 to 5 years' imprisonment." In addition, article 300 of the Penal Code provides as follows: "The provisions contained in the preceding article shall apply to anyone who commits hijacking against aircraft or persons therein."

Article 300. Aircraft hijacking. The provisions contained in the preceding article shall apply to anyone who commits hijacking against aircraft or persons therein.

7. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents

Article 2

The intentional commission of:

(a) a murder, kidnapping or other attack upon the person or liberty of an internationally protected person;

(b) a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty;

(c) a threat to commit any such attack;

(d) an attempt to commit any such attack; and

(e) an act constituting participation as an accomplice in any such attack shall be made by each State Party a crime under its internal law.

Article 123 of the Penal Code provides as follows: "Homicide. Whoever kills any person commits homicide. Any person guilty of homicide shall be sentenced to 8 to 20 years' imprisonment."

Article 132 of the Penal Code, as amended by article 5 of Decree No. 20-96 of the Congress of the Republic, provides as follows:

Article 132. Murder. Murder is committed by anyone who kills a person: (1) with treachery; (2) for payment, reward, promise or profit; (3) by using or causing flooding, fire, poisoning, explosion, collapse or demolition of a building or other means that may occasion major destruction; (4) with known premeditation; (5) with cruelty; (6) in an impulse of brutal perversity; (7) in order to prepare, facilitate, complete or conceal another offence or ensure the results thereof or immunity for himself or his partners therein or because he has not obtained the result intended when committing such other punishable act; (8) for terrorist purposes or in carrying out terrorist activities.

A murderer shall be sentenced to 25 to 50 years' imprisonment; the death penalty shall, however, be imposed in lieu of the maximum term of imprisonment if the circumstances of the act, the way in which it was carried out or the motivation behind it reveal that the perpetrator is especially dangerous.

Those not sentenced to death for this crime shall not be granted a reduction of penalty on any ground whatsoever.

Article 201 of the Penal Code: "Kidnapping or abduction. The kidnapping or abduction of a person for the purpose of obtaining a ransom, exchange of persons or for any other unlawful purpose of the same or similar nature, shall be punishable by 8 to 15 years' imprisonment.

The perpetrator shall be subject to the death penalty if the kidnapping or abduction results in the death of the abducted person."

Article 206 of the Penal Code: "Breaking and entering. Anyone who secretly or deceitfully enters or remains in another person's home or outbuildings, without his permission or against his express or tacit wishes, shall be sentenced to three months' to two years' imprisonment."

Article 207 of the Penal Code: "Specific aggravation. If the acts described in the preceding article are committed in the guise of authority, with the use of weapons or violence or by more than two persons, the punishment shall be two to four years' imprisonment."

Article 261 of the Penal Code: "Extortion and blackmail". Anyone who, in order to procure a wrongful gain or to defraud another person, violently forces him to sign, underwrite, issue, destroy or hand over a document, to contract an obligation or to renounce a right, shall be sentenced to one to six years' imprisonment."

Article 283 of the Penal Code: "Aggravated arson. Specific provision made for a more severe penalty when arson is committed under the following circumstances: (1) in buildings, houses or dwellings that are inhabited or intended for habitation; (2) in a train, boat or airplane or other vehicle for public transport; (3) in a public building intended for public use or for social welfare or cultural activities; in an airport, train station or garage; (4) in a warehouse holding explosive or flammable materials; (5) when it destroys property of scientific, artistic or historical value."

The perpetrator of aggravated arson shall be sentenced to 4 to 12 years' imprisonment."

Article 290. Attacks against the safety of maritime, river or air transport. Anyone who endangers his own or someone else's vessel or aircraft or commits any act likely to prevent or hamper maritime, river or air navigation shall be sentenced to 2 to 5 years' imprisonment.

Article 292. Attacks against other means of transport. Anyone who endangers, hinders or obstructs any other public transport means shall be sentenced to 1 to 3 years' imprisonment.

If the act results in damage, the person responsible shall be sentenced to 2 to 5 years' imprisonment.

Article 299 of the Penal Code provides as follows:

"Piracy. Anyone who commits, on the sea, in lakes or in navigable rivers, any act of depredation or violence against a vessel or against persons aboard a vessel shall be deemed to have committed the crime of piracy, unless he has been authorized to do so by a belligerent State or the vessel with which he performs such act belongs to the navy of a recognized State.

The following persons shall also be deemed to have committed the crime of piracy:

1. Anyone who seizes any vessel or anything belonging to the crew of such vessel by fraud or violence committed against its commander;

2. Anyone who hands over to pirates a vessel, its cargo or anything belonging to its crew;

3. Anyone who, using violence, opposes the defence, by the commander or the crew, of a vessel which is the target of piracy;

4. Anyone who, on his own behalf or that of others, equips a vessel intended to be used for piracy;

5. Anyone who, operating from national territory, traffics with or provides assistance to pirates.

Anyone guilty of piracy shall be sentenced to 3 to 5 years' imprisonment."

Article 300: "Aircraft hijacking. The provisions contained in the preceding article shall apply to anyone who commits hijacking against aircraft or persons therein."

Article 374 of the Penal Code: "Violation of diplomatic immunity. Anyone who violates the diplomatic immunity of a foreign head of State or of a representative with diplomatic status to the Government of the Republic shall be sentenced to 6 months' to 3 years' imprisonment."

Article 379 of the Criminal Code: "Death of a foreign head of State. Anyone who kills a foreign head of State who is in the Republic in an official capacity shall be sentenced to 20 to 30 years' imprisonment."

Any other assault not included in the preceding paragraphs shall be punished by two to four years' imprisonment.

Article 391 of the Penal Code: "Terrorism. A person who, for the purpose of undermining the constitutional order or disrupting public order, commits acts designed to cause a fire or to bring about rail, sea, river or air disasters shall be sentenced to 5 to 15 years' imprisonment.

If explosive materials of great destructive power are used in the commission of this crime or if the death or serious injury of one or several persons result therefrom, the perpetrator shall be sentenced to 10 to 30 years' imprisonment."

In accordance with Guatemalan penal law, the acts described in the relevant provisions shall be attributed to the accused when they are the consequence of an action or omission normally intended to produce such a consequence. The offence is international when the result was planned or when, although he did not seek such a result, the perpetrator, knowing it is punishable, commits the act. The offence has been committed when all the elements of its criminal definition are present; an

attempt has been made when, for the purpose of committing an offence, its execution has begun by means of relevant, concrete actions, and the offence is not completed for reasons independent of the will of the perpetrator.

It is understood that all punishments stipulated in the law should be imposed on the perpetrator of an offence that has been committed. The punishment imposed on the perpetrator of an attempt and the accomplice to a committed offence shall be the same as that stipulated in the law for the perpetrators of a committed offence, reduced by one third. The punishment imposed on the accomplices to an attempt shall be the same as that stipulated in the law for the perpetrators of a committed offence, reduced by two thirds (Penal Code, arts. 10, 11, 13, 14, 62, 63 and 64).

Perpetrators and accomplices, and to a lesser degree accessories after the fact, are criminally responsible in accordance with their participation in the crime. In that respect, the Penal Code provides:

Article 35 of the Penal Code: Responsible parties. Perpetrators and accomplices are criminally responsible for the offence.

Article 36 of the Penal Code: "Perpetrators are (1) persons who directly participate in the commission of the acts that constitute the offence; (2) persons who directly oblige or induce another person to commit it; (3) persons who cooperate in the commission of the offence, whether in its preparation or in its execution, by carrying out an act without which the offence could not have been committed; (4) persons who, having planned the execution of the offence with another person or other persons, are present at the moment of its commission."

Article 37 of the Penal Code: "Accomplices are (1) persons who incite or encourage others in their determination to commit an offence; (2) persons who promise to assist or cooperate after the commission of the offence; (3) persons who provide information or supply the appropriate means for the commission of the offence; and (4) persons who serve as a liaison or act as intermediaries between participants in order to arrange their participation in the offence."

Article 474 of the Penal Code: Accessory after the fact (ordinary). An accessory after the fact (ordinary) is a person who, having no previous understanding or agreement with the authors or accomplices of the offence, but who is aware that it has been committed, carries out one of the following actions:

1) Conceals the offender or help him to flee;

2) Refuses to hand over to the authorities, without reasonable motive, a person who is accused or pursued or convicted, and who is in the residence or dwelling of the person to whom the request is made;

3) Helps the author or accomplice to evade or shirk investigations by the authorities;

4) Receives, conceals, suppresses, destroys, uses, keeps, hides, trades or barters, in any form, objects, effects, instruments, evidence or traces of the offence.

Accessories after the fact shall be sentenced to 2 months' to 3 years' imprisonment.

Article 475 of the Penal Code: Accessory after the fact (extraordinary). An accessory after the fact (extraordinary) is a person who (1) Habitually harbours,

conceals or protects offenders in any way or conceals weapons or evidence of an offence, even if he or she does not have specific knowledge of the offence. (2) When, in accordance with the circumstances, he must presume that an offence has been committed, commits any of the acts referred to in the preceding article.

Perpetrators of the offence referred to in paragraph 1 of this article shall be sentenced to two to four years' imprisonment.

Perpetrators of the offence referred to in paragraph 2 of this article shall be sentenced to a find of 50 to 1,000 quetzales.

If the perpetrator of the offence sells or traffics the items in question, whether they are new or used, he shall be sentenced to six months' to two years' imprisonment and a fine of 100 to 2,000 quetzales.

The State of Guatemala has taken effective measures to prevent and punish terrorist acts, including abduction, homicide and other attacks against the lives and physical integrity of persons, including internally protected persons.

8. International Convention Against the Taking of Hostages

Article 1

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages ("hostage-taking") within the meaning of this Convention.

2. Any person who:

(a) Attempts to commit an act of hostage-taking, or

(b) Participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking likewise commits an offence for the purposes of this Convention.

Article 2

Each State Party shall make the offences set forth in article 1 punishable by appropriate penalties which take into account the grave nature of those offences.

The said Convention has been ratified by Guatemala and is therefore part of the country's legal system; accordingly, our Penal Code contains definitions of offences which could at some point be applied to the commission of this offence, since it embodies the main elements set out in the Convention. For instance, the offence of kidnapping or abduction is defined in article 201 of the Penal Code, which provides that any person commits this offence who carries it out for the purpose of obtaining ransom or an exchange of persons or the taking of any decision against the will of the abductee, or for any other similar or identical purpose. Article 387 also refers to the commission of the offence of sedition, which applies to any person who, while not repudiating the authority of the established Government,

publicly and riotously engages in an uprising in order to obtain by force or violence concessions not granted by the Government.

It should be noted that in relation to the offence that most closely resembles the content of the Convention (which for Guatemala is the offence of kidnapping), the applicable penalties are drastic, since they include the death penalty.

Article 201 has been amended by article 1 of Decree-Law No. 81-96, which provides as follows:

> "Kidnapping or abduction. Perpetrators or masterminds of the offence of kidnapping or abduction of one or more persons for the purpose of obtaining ransom or an exchange of persons or the taking of any decision against the will of the abductee, or for any other similar or identical purpose, shall be subject to the death penalty and, if it cannot be imposed, to 25 to 50 years' imprisonment. In such cases no extenuating circumstances shall be considered.
>
> Accomplices and accessories shall be sentenced to 20 to 40 years' imprisonment.
>
> Anyone imprisoned for the offence of kidnapping or abduction shall not be granted a reduction of penalty on any ground whatsoever."

Article 201 bis as supplemented by Decree-Law No. 58-95:

> "Anyone commits the offence of torture who, on the order or with the authorization, support or consent of the State authorities, intentionally inflicts on a person severe pain or suffering, whether physical or mental, or does so for the purpose of obtaining from him or a third person information or a confession concerning an act which he has committed or is suspected of committing, or persists in intimidating a person or, by this means, other persons.
>
> Members of groups or gangs organized for terrorist, insurgent, subversive or any other criminal purpose also commit the offence of torture.
>
> Perpetrator(s) of the offence of torture shall also be tried for the offence of kidnapping.
>
> The consequences of acts carried out by the competent authority in the lawful performance of its duties and in the safeguarding of public order shall not be considered torture.
>
> Perpetrator(s) of the offence of torture shall be sentenced to 25 to 30 years' imprisonment."

Article 201 ter has been supplemented by article 1 of Decree Law No. 33-96, which provides as follows:

> "Enforced disappearance. Anyone commits the offence of enforced disappearance who, on the order or with the authorization or support of the State authorities, in any way deprives one or more persons of their freedom on political grounds, concealing their whereabouts and refusing to reveal their fate or acknowledge their detection, as does any official or public employee, whether or not a member of the State security forces, who orders, authorizes, supports or consents to such actions.

Depriving one or more persons of their freedom, even if not on political grounds, constitutes the offence of enforced disappearance when it is committed by members of the State security forces if, in the exercise of their functions, they act arbitrarily, abusively or with excessive force. Members of groups or gangs organized for terrorist, insurgent, subversive or any other criminal purpose also commit the offence of enforced disappearance if they commit kidnapping or abduction or participate as members or collaborators of such groups or gangs.

The offence shall be considered a continuing offence until the victim has been released. Anyone convicted of enforced disappearance shall be sentenced to 25 to 40 years' imprisonment. The death penalty shall be imposed in lieu of the maximum prison sentence if the victim sustains serious or severe injuries, permanent psychic or psychological trauma, or dies as a result of the enforced disappearance."

"Article 387. Sedition. Anyone commits the offence of sedition who, while not repudiating the authority of the established Government, publicly and riotously engages in an uprising in order to achieve by force or violence any of the following objectives: (1) deposing an official or a public employee who has been lawfully appointed or elected or preventing him from taking office; (2) directly preventing the promulgation or enforcement of laws or judicial or administrative decisions; (3) committing acts of hatred or vengeance against the person or property of an authority or its agents; (4) committing, for political and social purposes, an act of coercion against individuals, a social class or the property of the State or a public entity; (5) raiding a penitentiary or detention centre or assaulting persons taking prisoners or detainees from one place to another, either in order to release them or to mistreat them.

Instigators or ringleaders of the offence of sedition shall be sentenced to one to five years' imprisonment and a fine of 100 to 200 quetzales.

Those who are merely perpetrators of sedition shall be sentenced to six months to two years' imprisonment."

9. Convention on the Physical Protection of Nuclear Material

Article 7

1. The intentional commission of:

(a) An act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property;

(b) A theft or robbery of nuclear material;

(c) An embezzlement or fraudulent obtaining of nuclear material;

(d) An act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;

(e) A threat:

(i) To use nuclear material to cause death or serious injury to any person or substantial property damage, or

(ii) To commit an offence described in subparagraph (b) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;

(f) An attempt to commit any offence described in paragraphs (a), (b) or (c); and

(g) An act which constitutes participation in any offence described in paragraphs (a) to (f);

shall be made a punishable offence by each State Party under its national law.

The above-mentioned Convention has been ratified by Guatemala and is therefore part of the country's legal system and regulations associated therewith. The Arms and Ammunition Act No. 39-89 of the Congress of the Republic, Title VII, Single Chapter, contains the offences and penalties relating to these types of illegal acts, which are governed specifically by the following articles: article 83, illegal importing of weapons; article 85, illegal manufacturing of firearms; article 91, illegal transport and/or transfer of firearms; article 93, illegal possession of offensive firearms, explosives, chemical, biological and nuclear weapons, mines and experimental weapons; article 95, illegal possession and storage of offensive firearms, explosives, chemical, biological and nuclear weapons, mines and experimental weapons; article 97 (C), illegal carrying of explosives, chemical, biological and nuclear weapons, mines and experimental weapons.

As regulated currently by the Arms and Ammunition Act, the penalties for the commission of the offences listed vary from 1 to 12 years' imprisonment and confiscation in all cases of the weapons or instruments that are the subject-matter of the offence. In view of the foregoing, the specific Antiterrorist Act which the Congress of the Republic will approve in due course provides for more drastic penalties, ranging from 25 to 30 years' imprisonment.

"Title VII
Single Chapter
Offences, punishments and penalties

Article 83 (last paragraph amended pursuant to article 26 of Decree-Law No. 74-90). Illegal importing of weapons. Anyone commits the offence of illegal importing of weapons who enters the national territory without declaring to the relevant customs authorities any of the weapons categorized in this Act as defensive and/or for sport. Anyone convicted of this crime shall be sentenced to one to three years' imprisonment and the confiscation of the weapons.

If the weapons are among those categorized in this Act as offensive firearms, offensive blade weapons, explosives, chemical, biological and nuclear weapons, mines and experimental weapons, the applicable penalty shall be four to six years' imprisonment and confiscation of the weapons."

"Article 85 (paragraphs 2 and 3 amended pursuant to article 27 of Decree-Law No. 74-90). Illegal manufacturing of firearms. Anyone who manufactures firearms without an appropriate licence from the Department of

Arms and Ammunition Control (DECAM) commits the offence of illegal manufacturing of firearms.

If the manufactured weapons are among those categorized in this Act as defensive and/or for sport, the applicable penalty shall be one to three years' imprisonment and confiscation of the weapons.

If the weapons are among those categorized in this Act as offensive firearms, offensive blade weapons, explosives, chemical, biological or nuclear weapons, mines or experimental weapons, the applicable penalty shall be four to six years' imprisonment and confiscation of the weapons."

"Article 91 (last paragraph amended pursuant to article 28 of Decree-Law No. 74-90). Illegal transport and/or transfer of firearms. Anyone who transports or transfers firearms within the national territory without a licence from DECAM commits the offence of illegal transport and/or transfer of firearms.

Anyone convicted of this offence shall be sentenced to one to two years' imprisonment and confiscation of the weapons if they are among those categorized in this Act as defensive and/or for sport.

If they are among those categorized in this Act as offensive firearms, explosives, chemical, biological and nuclear weapons, mines and experimental weapons, the applicable penalty shall be four to six years' imprisonment and confiscation of the weapons."

"Article 93. Illegal possession of firearms, explosives, chemical, biological and nuclear weapons, mines and experimental weapons. Anyone who possesses one or more weapons in this category without authorization commits the offence of illegal possession of offensive firearms, explosives, chemical, biological and nuclear weapons, mines and experimental weapons.

Perpetrators of this offence shall be sentenced to six to eight years' imprisonment and confiscation of the weapons."

"Article 95. Illegal possession and storage of offensive firearms, explosives, chemical, biological and nuclear weapons, mines and experimental weapons. Anyone who possesses these weapons without authorization from DECAM commits the offence of illegal possession and storage of offensive firearms, explosives, chemical, biological and nuclear weapons, mines and experimental weapons.

Perpetrators of this offence shall be sentenced to 8 to 12 years' imprisonment and confiscation of the weapons."

"Article 97 (last paragraph amended pursuant to article 29 of Decree-Law No. 74-90). Illegal carrying of offensive blade weapons. Anyone who carries blade weapons in this category commits the offence of carrying offensive blade weapons.

Perpetrators of this offence shall be sentenced to one to three years' imprisonment and confiscation of the weapons."

"Article 97 (C). Illegal carrying of explosives, chemical, biological and nuclear weapons, mines and experimental weapons. Anyone who carries weapons in this category without authorization commits the offence of illegal carrying of explosives, chemical, biological and nuclear weapons, mines and

experimental weapons. Perpetrators of this offence shall be sentenced to 8 to 10 years' imprisonment and confiscation of the weapons."

Furthermore, within the framework of this Convention, on 14 December 2001 Guatemala signed the Additional Safeguards Protocol with the International Atomic Energy Agency (IAEA), as a token of our country's solidarity with the global efforts to combat nuclear terrorism, since Guatemala has no nuclear plants and does not possess nuclear material. Guatemala is a party to the Treaty of Tlatelolco.

10. Convention on the Marking of Plastic Explosives for the Purpose of Detection

Article II

Each State party shall take the necessary and effective measures to prohibit and prevent the manufacture in its territory of unmarked explosives.

Article III

1. Each State party shall take the necessary and effective measures to prohibit and prevent the movement into or out of its territory of unmarked explosives.

There are currently no factories in Guatemala whose purpose is to produce plastic explosives, which is why there are no specific regulations related to the marking of such explosives; that does not mean, however, that relevant provisions would not be enacted if the occasion arose.

As for the adoption of necessary and effective measures to prohibit or prevent the movement into or out of Guatemalan territory of unmarked explosives, it is the responsibility of the Ministry for National Defence, under Decree No.123-85, Government Monopoly Act, which is empowered to take the necessary measures, as appropriate to exercise effective control.

11. Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance

Article 1. The contracting States undertake to cooperate among themselves by taking all the measures that they may consider effective, under their own laws, and especially those established in this convention, to prevent and punish acts of terrorism, especially kidnapping, murder, and other assaults against the life or physical integrity of those persons to whom the state has the duty according to international law to give special protection, as well as extortion in connection with those crimes.

Article 2. For the purposes of this convention, kidnapping, murder, and other assaults against the life or personal integrity of those persons to whom the state has the duty to give special protection according to international law, as well as extortion in connection with those crimes, shall be considered common crimes of international significance, regardless of motive.

Article 123 of the Penal Code: "Homicide. Whoever kills any person commits homicide. Any person guilty of homicide shall be sentenced to 8 to 20 years' imprisonment.

Article 132. Murder. Murder is committed by anyone who kills a person: (1) with treachery; (2) for payment, reward, promise or profit; (3) by using or causing flooding, fire, poisoning, explosion, collapse or demolition of a building or other

means that may occasion major destruction; (4) with known premeditation; (5) with cruelty; (6) in an impulse of brutal perversity; (7) in order to prepare, facilitate, complete or conceal another offence or ensure the results thereof or immunity for himself or his partners therein or because he has not obtained the result intended when committing such other punishable act; (8) for terrorist purposes or in carrying out terrorist activities.

A murderer shall be sentenced to 25 to 50 years' imprisonment; the death penalty shall, however, be imposed in lieu of the maximum term of imprisonment if the circumstances of the act, the way in which it was carried out or the motivation behind it reveal that the perpetrator is especially dangerous.

Those not sentenced to death for this crime shall not be granted a reduction of penalty on any ground whatsoever."

Article 201 of the Penal Code: "Kidnapping or abduction. The kidnapping or abduction of a person for the purpose of obtaining a ransom, exchange of persons or for any other unlawful purpose of the same or similar nature, shall be punishable by 8 to 15 years' imprisonment.

The perpetrator shall be subject to the death penalty if the kidnapping or abduction results in the death of the abducted person."

Article 206 of the Penal Code: "Breaking and entering. Anyone who secretly or deceitfully enters or remains in another person's home or outbuildings, without his permission or against his express or tacit wishes, shall be sentenced to three months' to two years' imprisonment."

Article 207 of the Penal Code: "Specific aggravation. If the acts described in the preceding article are committed in the guise of authority, with the use of weapons or violence or by more than two persons, the punishment shall be two to four years' imprisonment."

Article 261 of the Penal Code: "Extortion and blackmail. Anyone who, in order to procure wrongful gain or to defraud another person, violently forces him to sign, underwrite, issue, destroy or hand over a document, to contract an obligation or to renounce a right, shall be sentenced to one to six years' imprisonment."

Article 283 of the Penal Code: "Aggravated arson. Specific provision is made for a more severe penalty when arson is committed under the following circumstances: (1) in buildings, houses or dwellings that are inhabited or intended for habitation; (2) in a train, boat, airplane or other vehicle for public transport; (3) in a public building intended for public use or for social welfare or cultural activities; in an airport, train station or garage; (4) in a warehouse holding explosive or flammable materials; (5) when it destroys property of scientific, artistic or historical value."

The perpetrator of aggravated arson shall be sentenced to 4 to 12 years' imprisonment."

Article 290. Attacks against the safety of maritime, river or air transport. Anyone who endangers his own or someone else's vessel or aircraft or commits any act likely to prevent or hamper maritime, river or air navigation shall be sentenced to two to five years' imprisonment.

Article 292. Attacks against other means of transport. Anyone who endangers, hinders or obstructs any other public transport means shall be sentenced to one to three years' imprisonment.

If the act results in damage, the person responsible shall be sentenced to two to five years' imprisonment.

Article 299 of the Penal Code of Guatemala provides as follows:

"Piracy. Anyone who commits, on the sea, in lakes or in navigable rivers, any act of depredation or violence against a vessel or against persons aboard a vessel shall be deemed to have committed the crime of piracy, unless he has been authorized to do so by a belligerent State or the vessel with which he performs such act belongs to the navy of a recognized State.

The following persons shall also be deemed to have committed the crime of piracy:

1. Anyone who seizes any vessel or anything belonging to the crew of such vessel by fraud or violence committed against its commander;

2. Anyone who hands over to pirates a vessel, its cargo or anything belonging to its crew;

3. Anyone who, using violence, opposes the defence, by the commander or the crew, of a vessel which is the target of piracy;

4. Anyone who, on his own behalf or that of others, equips a vessel intended to be used for piracy;

5. Anyone who, operating from national territory, traffics with or provides assistance to pirates.

Anyone guilty of piracy shall be sentenced to three to five years' imprisonment."

Article 300: "Aircraft hijacking. The provisions contained in the preceding article shall apply to anyone who commits hijacking against aircraft or persons therein."

Article 374 of the Penal Code: "Violation of diplomatic immunity. Anyone who violates the diplomatic immunity of a foreign head of State or of a representative with diplomatic status to the Government of the Republic shall be sentenced to 6 months' to 3 years' imprisonment."

Article 379 of the Criminal Code: "Death of a foreign head of State. Anyone who kills a foreign head of State who is in the Republic in an official capacity shall be sentenced to 20 to 30 years' imprisonment.

Any other assault not included in the preceding paragraphs shall be punished by two to four years' imprisonment.

Article 391 of the Penal Code: Terrorism. A person who, for the purpose of undermining the constitutional order or disrupting public order, commits acts designed to cause a fire or to bring about rail, sea, river or air disasters shall be sentenced to 5 to 15 years' imprisonment.

If explosive materials of great destructive power are used in the commission of this crime or if the death or serious injury of one or several persons result therefrom, the perpetrator shall be sentenced to 10 to 30 years' imprisonment."

In accordance with Guatemalan penal law, the acts described in the relevant provisions shall be attributed to the accused when they are the consequence of an action or omission normally intended to produce such a consequence. The offence is intentional when the result was planned or when, although he did not seek such a result, the perpetrator, knowing it is punishable, commits the act. The offence has been committed when all the elements of its criminal definition are present; an attempt has been made when, for the purpose of committing an offence, its execution has begun by means of relevant, concrete actions, and the offence is not completed for reasons independent of the will of the perpetrator.

It is understood that all punishments stipulated in the law should be imposed on the perpetrator of an offence that has been committed. The punishment imposed on the perpetrator of an attempt and the accomplice to a committed offence shall be the same as that stipulated in the law for the perpetrators of a committed offence, reduced by one third. The punishment imposed on the accomplices to an attempt shall be the same as that stipulated in the law for the perpetrators of a committed offence, reduced by two thirds (Penal Code, arts. 10, 11, 13, 14, 62, 63 and 64).

Perpetrators and accomplices, and to a lesser degree accessories after the fact, are criminally responsible in accordance with their participation in the crime. In that respect, the Penal Code provides:

Article 35 of the Penal Code: Responsible parties. Perpetrators and accomplices are criminally responsible for the offence.

Article 36 of the Penal Code: "Perpetrators are (1) persons who directly participate in the commission of the acts that constitute the offence; (2) persons who directly oblige or induce another person to commit it; (3) persons who cooperate in the commission of the offence, whether in its preparation or in its execution, by carrying out an act without which the offence could not have been committed; (4) persons who, having planned the execution of the offence with another person or other persons, are present at the moment of its commission."

Article 37 of the Penal Code: Accomplices are (1) persons who incite or encourage others in their determination to commit an offence; (2) persons who promise to assist or cooperate after the commission of the offence; (3) persons who provide information or supply the appropriate means for the commission of the offence; and (4) persons who serve as links or act as intermediaries between participants in order to arrange their participation in the offence."

Article 474 of the Penal Code: "Accessory after the fact (ordinary). An accessory after the fact (ordinary) is a person who, having no previous understanding or agreement with the authors or accomplices of the offence, but who is aware that it has been committed, carries out one of the following actions:

(1) Conceals the offender or helps him to flee;

(2) Refuses to hand over to the authorities, without reasonable motive, a person who is accused or pursued or convicted, and who is in the residence or dwelling of the person to whom the request is made;

(3) Helps the author or accomplice to evade or shirk investigations by the authorities;

(4) Receives, conceals, suppresses, destroys, uses, keeps, hides, trades or barters, in any form, objects, effects, instruments, evidence or traces of the offence.

Accessories after the fact shall be sentenced to two months' to three years' imprisonment."

Article 475 of the Penal Code: Accessory after the fact (extraordinary). An accessory after the fact (extraordinary) is a person who: (1) Habitually harbours, conceals or protects offenders in any way or conceals weapons or evidence of an offence, even if he or she does not have specific knowledge of the offence. (2) When, in accordance with the circumstances, he must presume that an offence has been committed, commits any of the acts referred to in the preceding article.

Perpetrators of the offence referred to in paragraph 1 of this article shall be sentenced to two to four years' imprisonment.

Perpetrators of the offence referred to in paragraph 2 of this article shall be sentenced to a fine of 50 to 1,000 quetzales.

If the perpetrator of the offence sells or traffics the items in question, whether they are new or used, he shall be sentenced to six months' to two years' imprisonment, and a fine of 100 to 2,000 quetzales.

The State of Guatemala has taken effective measures to prevent and punish terrorist acts, including abduction, homicide and other attacks against the lives and physical integrity of persons, including internationally protected persons.

1.10 Subparagraph 3 (d) of the Resolution requires all States to become parties as soon as possible to all 12 international conventions and protocols relating to terrorism. The CTC would appreciate receiving information on the progress made regarding the ratification by Guatemala of:

- *The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; and*
- *The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.*

Both texts have been sent to the General Secretariat of the Presidency of the Republic to be transmitted to the Congress of the Republic for their approval, pending ratification by the President of the Republic.

1.11 Article 21 of the Regulations for the Protection and Determination of Refugee Status in the Territory of the State of Guatemala stipulates that a refugee may be extradited solely in accordance with the provisions of international treaties duly ratified by Guatemala. According to:

- *Art. 8 (2) of the Convention for the Suppression of Unlawful Seizure of Aircraft,*
- *Art. 8 (2) of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation,*
- *Art. 8 (2) of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents,*

- *Art. 10 (2) of the International Convention against the Taking of Hostages,*
- *Art. 11 (2) of the Convention on the Physical Protection of Nuclear Material,*
- *Art. 11 (2) of the Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation,*
- *Art. 9 (2) of the International Convention for the Suppression of Terrorist Bombings, and*
- *Art. 11 (2) of the International Convention for the Suppression of the Financing of Terrorism,*

A State which makes extradition conditional on the existence of treaties may, at its option, consider these conventions as a legal basis for extradition. Please confirm that Guatemala has chosen to consider each of these treaties as a basis for extradition in relation to the other States which are parties to the treaty.

Article 51 of the Regulations for the Protection and Determination of Refugee Status in the Territory of Guatemala states that "the handing over for extradition of a refugee shall take place solely in accordance with the provisions of international treaties duly ratified by the State of Guatemala".

In this respect, Guatemala is governed by the provisions of international extradition treaties, and therefore considers that such a proceeding would be in accordance with the conventions in force listed in this question; if a State requests extradition based on the existence of one or some of those conventions, Guatemala could accept them at its discretion as a legal basis for the extradition request.

Guatemala confirms that from the time of its ratification or adherence to the conventions cited, it committed itself internationally to implement them in relation to all States that are parties to them.

The foregoing applies to all the conventions listed with the exception of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, to which Guatemala is not yet a party.

1.12 Could Guatemala please confirm: that claims of political motivations are not recognized as grounds for refusing requests for the extradition of refugees and other persons who are alleged to have participated in the financing, planning, preparation or perpetration of terrorist acts or to have supported terrorist acts, and that terrorist offences are considered as ordinary crimes for the purposes of article 8 of the Guatemalan Penal Code.

According to article 27 of the Political Constitution of the Republic of Guatemala, extradition is governed by the provisions of international treaties and Guatemala recognizes the right of asylum and grants it in accordance with international practices. Extradition of Guatemalans shall not be attempted for political offences, and in no case will they be handed over to a foreign government, except as established in international treaties and conventions with respect to crimes against humanity or against international law.

Article 8 of the Penal Code provides that extradition may be attempted or granted solely for ordinary crimes, and in no case may it be attempted or granted for political offences or related ordinary crimes.

Article 51 of the Regulations for the Protection and Determination of Refugee Status in the Territory of the State of Guatemala states that the handing over for extradition of a refugee shall take place solely in accordance with the provisions of international treaties duly ratified by the State of Guatemala.

In accordance with the Convention on Refugee Status, article 1, subparagraph (f), its provisions shall not be applicable to an individual if there are grounds to believe he has committed a violation of international law, a war crime or a crime against humanity as defined in the international instruments drawn up to make provision in respect of these crimes, or acts contrary to the purposes and principles of the United Nations.

The State of Guatemala must determine, in specific cases, whether in its view political motivations exist, in order to be able to accept or reject extradition requests. Political motivations are not taken into consideration in cases of terrorism.

The Penal Code, in article 282, considers the following offences against collective security to be crimes: arson, criminal damage, disabling of defences, manufacture or possession of explosives; attacks against the communications media, means of transport or other public services; offences of international importance; offences against public order: terrorism, public intimidation, illicit association, trafficking in explosives, etc.

1.13 The CTC would be grateful for any additional information regarding:

- *The Act to Prevent and Combat Terrorism, once enacted;*
- *The "Model Antiterrorist Act" which is being prepared by the Forum of Presidents of the Legislative Branch of Central America (FOPREL); and*
- *The amendments to Decree-Law No. 39-89 on arms control, once enacted.*
- Elaboration of the Act to Prevent and Combat Terrorism: Work is continuing on the drafting of this law.
- The Model Antiterrorist Act being prepared by the Forum of Presidents of the Legislative Branch of Central America (FOPREL): there has been no progress on this proposal.
- The amendments to Decree-Law No. 39-89 on arms control: the draft amendments to Decree No. 39-89 regulating arms and ammunition are still under consideration in the legislature.

2. Assistance and guidance

2.1. The CTC notes that the Government of Guatemala has requested assistance in connection with the implementation of the Resolution in the following areas:

- *drafting of legislation;*
- *immigration services and travel documents;*
- *airport security;*
- *relationship between drug trafficking and terrorism, arms trafficking and money-laundering.*

2.2. The CTC notes also that its Technical Assistance Team has met with representatives of the Permanent Mission of Guatemala to discuss potential sources of assistance and advice. I am pleased that plans are going ahead for experts from Spain to visit Guatemala to assist in the review of its legislative framework to implement Resolution 1373. The Technical Assistance Team will continue to monitor the progress of this work.

3. Submission of further report

3.1. The CTC and its experts stand ready to provide further clarification to the Government of Guatemala on any of the matters raised in this letter. The experts can be contacted through Genevieve Welch (telephone: 44 775 61081 and Romulus Perez (999631179)).

3.2. The CTC would be grateful to receive further information on the questions and comments raised in this letter from the Government of Guatemala (within three months from the date of the note, or another appropriate date in special cases). As with previous reports, it is the intention of the CTC to circulate the further report as a document of the Security Council. It is open to the Government of Guatemala, if desired, to submit a confidential annex to the report for the attention of the CTC members only.

3.3. The CTC may, in a future stage of its work, have further comments or questions for the Government of Guatemala arising from other aspects of the Resolution. It would be grateful to be kept informed of all relevant developments regarding the implementation of the Resolution by the Government of Guatemala.

United Nations S/2003/356

Security Council

Distr.: General
21 March 2003

Original: English

Letter dated 19 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 2 January 2003 (S/2003/20).

The Counter-Terrorism Committee has received the attached third report from Brazil submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

03-29526 (E) 310303

Annex

Letter dated 14 March 2003 from the Chargé d'affaires a.i. of the Permanent Mission of Brazil to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

In response to your letter dated 16 December 2002, I have the honour to enclose herewith the second supplementary report of the Brazilian Government to the Counter-Terrorism Committee, pursuant to operative paragraph 6 of resolution 1373 (2001), with further information regarding the matters identified in the correspondence referred to (see enclosure).

(*Signed*) Luiz Tupy Caldas de **Moura**
Ambassador
Chargé d'affaires a.i.

Enclosure

Brazil: report to the Counter-Terrorism Committee concerning the application of resolution 1373 (2001)

1.2 Please provide a progress report on and detailed outline of the amendments to Act 9613/98 relating to the financing of terrorism.

PLS-117/2002[1] amends Act 9613/98[2] adding financing of terrorism as a predicate offence to money laundering. Senate leaders introduced PLS-117/2002 on May 6th 2002. The Senate approved it on June 19th 2002. The Senate forwarded PLS-117/2002 on June 20th 2002 to the House of Representatives. PLS-117/2002 was granted on September 16th 2002 high priority voting status.[3]

1.3 effective implementation of paragraph 1 of the Resolution requires that there are provisions in place specifically criminalizing the wilful provision or collection, by any means, directly or indirectly, of funds by the nationals of Brazil or in its territory with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts. For an act to constitute an offence as described above it shall not be necessary that the funds were actually used to carry out a terrorist offence (see article 2, paragraph 3, of the Convention for the Suppression of Terrorist Financing). The acts sought to be criminalised are thus capable of being committed even if:

- ***The only terrorist act takes place or is intended to take place outside the country; or***
- ***No related terrorist act has actually occurred or is attempted.***

According to the reply in the supplementary report, Act 9613/98 will be amended to include the financing of terrorism in the "range of crimes that may constitute antecedent to money laundering." As explained above, this paragraph requires not only adding financing of terrorism as an antecedent to the offence of money laundering, the acts of collecting and using of funds for terrorist purposes need to be criminalised. Therefore, the provisions of Act 9613/98, either as currently in force or as proposed to be amended, do not appear to meet the requirements entirely. Please explain what steps Brazil intends to take in this regard.

The wilful provision or collection, by any means, directly or indirectly, of funds by the nationals of Brazil or in its territory with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts has already been criminalised in Brazil.

Act 7.170/83,[4] Article 20, punishes wilful terrorism financing: "*To cause havoc, to plunder, to extort, to steal, to kidnap, to keep in home-imprisonment, to burn down, to depredate, to provoke explosion, to practice personal assault or acts of terrorism, for political reasons or for the obtention of funds that are*

[1] PLS-117/2002 *Alters and adds provisions to Act 9.613/1998.*

[2] Act 9613/98 This law addresses the crimes of money laundering or concealment of assets, rights, and valuables; the measures designed to prevent the misuse of the financial system for illicit actions as described in this law; it creates the Council for Financial Activities Control (COAF); and addresses other matters.

[3] For a regularly updated progress report of PLS-117/2002, see Câmara dos Deputados. http://www.camara.gov.br/internet/sileg/Prop_Pesquisa.asp.

[4] Bill n. 7.710, of 14 December 1983 "*Defines the crimes against National Security, social and political order, and establishes the legal procedure for the judgement of such offences and other provisions.*"

destined to the maintenance of clandestine or subversive organizations".[5] Terrorist organizations may extort ordinary people, the same way Mafia-like organizations do, in order to finance their criminal activities. One of the key characteristics of terrorist organizations is their political motivation and their clandestine nature. The penalty for wilful terrorism financing varies from 3 to 30 years of prison.

Act 7.170/83, Article 24, also punishes a different variation of wilful terrorism financing: "*To recruit, to be part of or to sustain military-like illegal organizations, of any kind, of armed nature or not, with or without uniform, with goal of combat*".[6] Whoever sustains a military-like illegal organization, supports, finances this organization. From the perspective of Brazilian legislation, terrorist organizations may be considered military-like organizations, since the majority of them have the goal of combat. In light of Article 24, wilful terrorism financing is not ancillary to terrorist acts. Even if terrorist acts have not been committed, one may commit wilful terrorism financing. To sustain, to support, and to finance terrorist organizations is all that Act 7.170/83, Article 24, requires. The penalty for wilful terrorism financing varies from 2 to 8 years in prison.

1.4 In relation to sub-paragraph 1(d) of the Resolution, the supplementary report mentions that Brazil intends to introduce more specific legal provisions in its domestic law in order to give full effect to the provisions of the Convention for the Suppression of Financing of Terrorism. Please explain how those proposed provisions would meet the requirements of paragraph 1 of the Resolution. Please provide an indication of the timeframe within which the proposed legislation will enter into force.

Brazil is in full compliance with the recommendations of the Group of Egmont and follows the Forty Recommendations of the Financial Action Task Force on Money Laundering (FATF) concerning the subject.

In addition to PLS-117/2002[7] and to the provisions of Act 7.170/83 Brazil is analyzing the following measures to fully implement the International Convention for the Suppression of the Financing of Terrorism:

- The need of supplementing, not of supplanting, existing Federal law that makes the financing of terrorism a crime.

- Whether it would be necessary to explicitly include jurisdiction over perpetrators of terrorism related offences committed abroad who are later discovered in Brazil. Article 10 of the International Convention for the Suppression of the Financing of Terrorism requires all State Parties to either extradite or prosecute perpetrators of offenses covered by the Convention who are found within the territory of a State Party. The structure of such a measure would have to be compatible with the Convention, which sets up both mandatory and permissive bases of jurisdiction. It also excludes certain offenses that do not have an international projection.

- The need of supplementing, not of supplanting, existing Federal law that allows for the freezing and confiscation of terrorist assets. The International Convention for the Suppression of the Financing of Terrorism, Article 8, requires each State Party to take appropriate measures, in accordance with its domestic legal principles, for the detection and freezing, seizure or forfeiture of any funds used or allocated for the purposes of committing the offences described.

[5] See Act 7.170/83 at "*Presidência da República*"; "*Subchefia para Assuntos Jurídicos*" http://www.planalto.gov.br/ccivil_03/Leis/L7170.htm

[6] Ibiden.

[7] PLS-117/2002 *Alters and adds dispositions to Act 9.613/1998*

- The best way of establishing administrative or civil penalties against legal entities, if any person responsible for the management or control of that legal entity has, in that capacity, committed a terrorism financing offence, thereby fulfilling Article 5 of the International Convention for the Suppression of the Financing of Terrorism.

1.5 Effective implementation of paragraph 1 of the Resolution requires an appropriate monitoring mechanism to ensure that funds collected by non-profit organizations (such as charitable, religious or cultural institutions) are not diverted to other than their stated purposes, in particular for the financing of terrorism. According to the supplementary report, foundations shall be supervised by the Public Prosecutor's Office of the state in which the are located. Please provide a detailed outline of the legal provisions (including article 66 of the Civil Code of 2002) and procedures and describe how Brazil can meet the requirements of this paragraph.

Non-profit entities that benefit from tax immunity (Act 9.532/97, Article 12, *caput*) and non-profit entities that benefit from income tax exemption and social contribution exemption (Act 9.532/97, Article 15, *caput*) are required to present, annually, a revenue declaration to the Federal Tax Office[8] (Act 9.532/97, Article 12, paragraph 2, "e"[9] and Act 9.532/97, Article 15, paragraph 3[10]).

Non-profit entities that receive resources from the State are subject to accounting, financial, and budgetary control (Federal Constitution, Section IX), as prescribed by Act 9.790/99, Article 4, Paragraph 7, "d".[11] They are subject to both external and internal control, especially of the Court of Accounts of the Union,[12] subordinated to Congress.

Non-profit entities that benefit from tax immunity and non-profit entities that benefit from income tax exemption and social contribution exemption are required to make their reports or other information about their operations available to State Attorneys.[13]

The Ministry of Justice monitors non-profit entities that receive resources from the State,[14] the so-called "Civil Society Organizations of Public Interest". In order to be granted "Public Interest" status, charities must apply to the Ministry of Justice. Over 50% of such applications are denied as legally non-conforming. A database with all non-profit entities that are entitled to receive resources from the State in order to provide activities for the benefit of the population is available online.[15] Non-profit entities that receive resources from the State must make their activities and financial report publicly available, annually.[16] State Attorneys are also allowed to monitor "Civil Society Organizations of Public Interest".[17]

---

[8] In Portuguese, "*Receita Federal*".
[9] Act 9.790/99, Article 12, paragraph 2, "e"
[10] Act 9.790/99, Article 15, and paragraph 3.
[11] Act 9.790/99, Article 4, Paragraph 7, "d".
[12] See Federal Constitution, Section IX at http://www.uni-wuerzburg.de/law/br00000_.html.
[13] See "Promotoria de Justiça de Tutela das Fundações e Entidades de Interesse Social" at http://mpdft.gov.br/Orgaos/PromoJ/Pjfundacoes/fundacoes.htm.
[14] See "Ministério da Justiça". Secretaria Nacional de Justiça. http://mj.gov.br/snj/oscip.htm.
[15] See "Ministério da Justiça". Secretaria Nacional de Justiça. http://www.mj.gov.br/sistemas/OSCIP/index.asp.
[16] Act 9.790/99, Article 4, VI, "b": "*que se dê publicidade por qualquer meio eficaz, no encerramento do exercício fiscal, ao relatório de atividades e das demonstrações financeiras da entidade, incluindo-se as certidões negativas de débitos junto ao INSS e ao FGTS, colocando-os à disposição para exame de qualquer cidadão.*"
[17] See "Promotoria de Justiça de Tutela das Fundações e Entidades de Interesse Social" at http://mpdft.gov.br/Orgaos/PromoJ/Pjfundacoes/fundacoes.htm.

Access to information is ensured to everyone (Federal Constitution, Article 5, and XIV). All persons are entitled to receive from government agencies information of private interest to such persons or of collective or general interest which shall be provided within the period established by law, subject to liability, with the exception of information whose secrecy is vital to the security of society and of the State (Federal Constitution, Article 5, XXXIII). The results of such government oversight are not considered as vital to the security of society and of the State. Therefore, secrecy laws do not protect them. Any citizen is entitled to file a representation petition, thereby asking State Attorneys to investigate irregularities that are supposed to have occurred in charitable organizations.

In accordance with the rules and procedures established by the Central Bank, all foreign exchange operations in Brazil must be registered in the Central Bank Information System ("SISBACEN"), as well as all operations involving bank deposits maintained by non-residents in Brazilian banks up to R$ 10 thousand. In order to monitor those daily registers (approximately 13.000 foreign exchange operations and 200 operations involving non-resident accounts) the Central Bank of Brazil uses a computerized system that selects operations for further analysis based on predefined parameters. Among other criteria, selection depends on the classification of the operation. Donations and other types of transference of assets made by non-profit organizations or non-governmental entities are subject to rigid analysis. Overseas donations are also subject to specific regulations (Official Communiqué number 9.068 of the Central Bank of Brazil, dated 4 December 2001).

1.6 Effective implementation of paragraph 1 of the Resolution also requires that a legal obligation to report suspicious transactions should be extended to include all professions engaged in financial transactions (such as lawyers, notaries, and accountants). Please indicate what action Brazil intends to take in this regard.

In 2001, the Financial Action Task Force on Money Laundering (FATF) decided to begin a review of the Forty Recommendations. A number of factors make such a review desirable. The FATF has identified several areas in which possible changes could be made to Forty Recommendations. One of these sectors is the so-called "non-financial businesses and professions area".[18]

The FATF is actually considering whether the Forty Recommendations should be extended to cover seven categories of non-financial businesses and professions: casinos and other gambling businesses, dealers in real estate and high value items, company and trust service providers, lawyers, notaries, accounting professionals and investment advisors, given the increased use, by criminals, of professionals and of other intermediaries for obtaining advice or other assistance in laundering criminal funds.[19]

As regards "casinos and other gambling businesses", it should be noted that casinos are not allowed to function in Brazil in accordance with Executive Act 9.125/46.[20]

Act 9613/98, Article 9, Paragraph, VI, explicitly determines that other gambling businesses, namely "bingos" and lotteries, are subject to the requirements of customer identification, record-keeping and suspicious transactions reports, established, respectively, by Chapter 6 and Chapter 7. Council for Financial Activities Control (COAF)[21] Resolution no. 03, of June 02, 1999; Resolution no. 05, of July 2, 1999; and Resolution no. 09, of December 2000[22] have regulated these requirements.

---

[18] See Financial Action Task Force on Money Laundering (FATF). http://www1.oecd.org/fatf/40RecsReview_en.htm.

[19] Ibidem.

[20] Executive Act 9.125, of 30 April 1946.

[21] The Council for Financial Activities Control (COAF) is the Brazilian Financial Intelligence Unit (FIU).

[22] See Council for Financial Activities Control (COAF). http://www.fazenda.gov.br/coaf/site/p_money.htm.

Act 9613/98, Article 9, Paragraphs X and XI, determines that dealers in real estate and high value items are subject to the requirements of customer identification, record-keeping and suspicious transactions reports, established, respectively, by Chapter 6 and Chapter 7. Council for Financial Activities Control (COAF) Resolution no. 01, of April 01, 1999; Resolution no. 04, of June 02, 1999; and Resolution no. 08, of September 15, 1999 has regulated these requirements.

Company and trust service providers do not exist, as such, in Brazil. There is no specific legislation on trust services in this country. Trust services are a legal figure that is akin to the Anglo-American legal system.

Act 9613/98, Article 9, Paragraph I, determines that Chapter 6 and Chapter 7 subject to the requirements of customer identification, record-keeping and suspicious transaction reports, establish investment advisors, respectively.

Concerning lawyers, notaries and accounting professionals, the Council for Financial Activities Control (COAF) is conducting a public consultation process[23] on its website, thereby inviting comments on the review of the Forty Recommendations as regards their extension to cover these non-financial businesses and professions. This Council wants to allow lawyers, notaries and accounting professionals to express their views on the issues being discussed in the review process of the Forty Recommendations. The Council for Financial Activities Control has also been presenting seminars on this subject at the respective regulatory agencies – lawyers, Brazilian Bar Association; accounting professionals, National Association of Accounting Professionals, etc. It should be emphasized that Act 9613/98 already covers lawyers, notaries, accounting professionals and investment advisors as regards their criminal liability in money laundering activities, in light of Article 1.

1.7 Please explain whether the existing provisions of the Code of Criminal Procedure provide for the freezing of funds of persons and entities whether resident or non-resident, linked to terrorist acts, even if the funds are of a legal origin and regardless of whether they have been actually used for a terrorist act. Please outline the provisions of that law by which funds linked to terrorists can be frozen or seized, including on request of another country. According to the supplementary report, legal measures for the freezing or seizure of funds belonging to terrorists will be introduced to implement the Convention for the Suppression of the Financing of Terrorism. Please provide a detailed outline of those provisions.

The Code of Criminal Procedure allows, Article 125 and Article 132, the freezing and seizure of tangible and intangible assets that have been acquired with the proceeds of crime, whether resident or non-resident alike, including on request of another country, even when they have been transferred to third parties.[24]

When ordered by legal courts, the Central Bank of Brazil points out to financial institutions (and other specific entities listed by law), which values and goods from both individuals and firms shall be subject to freezing and seizure.

Act 9613/98 explicitly allows the freezing and seizure of terrorism related funds in light of Article 4. Terrorism, according to Act 9613/98, Article 1, II, is money laundering predicate offence.

The wilful provision or collection, by any means, directly or indirectly, of funds by the nationals of Brazil or in its territory with the intention that the funds should be used, or in the knowledge that they are to be

[23] See Council for Financial Activities Control (COAF). http://www.fazenda.gov.br/coaf/.

[24] See Presidência da República. Subchefia de Assuntos Jurídicos. http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del3689.htm

used, in order to carry out terrorist acts has already been criminalised in Brazil by Act 7.170/83, Articles 20 and 24.

Furthermore, PLS-117/2002[25] adds financing of terrorism as a predicate offence to money laundering. In other words, PLS-117/2002 criminalises measures intended to hide the origin of founds obtained without the effective practice of acts of terrorism whenever it is the author's intention to use these assets for the commission of future terrorist attempts.

1.8 Please provide a progress report and detailed outline of the Act no. 6764/2002, which proposes inter alia that terrorism should be established as a crime in the Penal Code of Brazil.

PL 6.764/2002 was prepared by a High Level Commission of Experts created to study and suggest general principles and a Project of Bill concerning the Defense of the Democratic State based on the Rule of Law. Government leaders introduced PL 6.764/2002 in the House of Representatives on May 9th 2002. It was forwarded to the Commission of Foreign Relations and National Security on May 28th 2002.[26] The document proposes the inclusion of a new Section in the Penal Code that shall be divided in five chapters.

"Chapter I: On crimes against national sovereignty;
Chapter II: On crimes against democratic institutions;
Chapter III: On crimes against the functioning of democratic institutions and essential services;
Chapter IV: On crimes against Foreign or International Authorities;
Chapter V: On crimes against citizenship."

Chapter I: On crimes against national sovereignty – Intends to impose duties concerning loyalty to The Brazilian State, as most countries do. Among other provisions, criminalises attempts against sovereignty, treason, territorial violation, attempt against territorial integrity and espionage.

Chapter II: On crimes against democratic institutions – contains provisions defining the crimes of: insurrection, conspiracy and incitation to civil war. Criminalises attempts against the Heads of the Executive, Legislative and Judiciary Powers well as *Coups d'état*.

Chapter III: On crimes against the functioning of democratic institutions and essential services – Includes the provisions of the crime of terrorism and punishes the activities of unlawful armed groups, as well as the abduction of any means of transportation. Incur in the above mentioned crime those who "perform the following acts, motivated by political or religious faction, having as objective the dissemination of terror: to cause devastation, to steal, to provoke bomb explosion, to abduct, to burn down, to depredate or to practice personal attempts or sabotage, causing effective danger or harm to people. It is required for the configuration of the crime of terrorism that the illicit conduct be motivated by political or religious faction or directed against a legitimate authority, preventing the free exercise of the powers of the Union and other entities of the Federation.

Incur in the same crime those who take possession or exercise, total or partial, permanent or non-permanent, control of public means of communication or means of transportation, ports, airports, train or bus stations, public facilities or establishments destined to water, energy, fuel, food supply or designed to provide general and not to be postponed necessities/urgent necessities of the population with the same intention mentioned above.

---

[25] PLS-117/2002 *Alters and adds provisions to Act 9.613/ 1998.*

[26] For a regularly updated progress report of PL 6.764/2002, see House of Representatives. http://www.camara.gov.br/internet/sileg/Prop_Pesquisa.asp.

As stated, actions of devastation and promotion of sabotage are punished. In both cases, the misuse of information technology devices such as computers and remote attacks may constitute an instrument to commit such illicit.

Chapter IV: On crimes against Foreign or International Authorities – Protect the integrity of the representatives of foreign Governments, as well as heads of International Organizations in Brazilian territory.

Chapter V: On crimes against citizenship – Establish the crime of attempt against the free right of manifestation, both of individuals and public authorities. The project also punishes association for the purpose of discrimination.

1.9 While it is noted that the Constitution of Brazil repudiates terrorism in principle, the CTC would be grateful to know how Brazil intends to deal with the specific requirement of sub-paragraph 2 (a) to criminalise the recruitment in Brazil to terrorist groups, even if the recruiter does not belong to the criminal association. Article 288 of the Penal Code is stated to deal only with as association of three persons or more for purposes of crime and therefore appears not to meet the requirements of sub-paragraph 2 (a) entirely.

PL 2.858/2000 updates the legislation concerning the repression of criminal organizations. It amends The Brazilian Penal Code, Act 7.960 (of 12 December 1989), and Act 9.034 (of 3 may 1995). That project aims to criminalise the association of more than three people, in an organized group, by means of a legal entity or not, in a structured manner and with job division, that makes use of violence, intimidation, corruption, fraud and other similar means/tactics in order to commit a crime. In other words, any wilful involvement in a criminal organization is a crime, including, naturally, for the purposes of the recruitment of new participants.

Article 288 of the Penal Code already criminalises any association for the purposes of the commission of an offence regardless the existence of any structure, job division, use of violence, intimidation, corruption or other similar means.

1.10 Effective implementation of sub-paragraphs 2 (d) and (e) requires each state to criminalise the use of its territory for the purpose of committing terrorist acts against other states or their citizens, or for the purpose of financing, planning or facilitating terrorist acts against other states or their citizens, even if related terrorist acts are not committed or attempted. The existing provisions in Brazilian law do not appear to meet these requirements entirely. Please indicate what action Brazil intends to take in this regard.

In accordance with the Criminal Code, Article 7, II, "a", the Brazilian jurisdiction is extended over perpetrators of offences described in international conventions to which Brazil is a part of as soon they are found in the national territory. Brazil is a member of most anti-terrorism international conventions. Therefore, under Brazilian law, anyone who has committed terrorist acts abroad and is found in the national territory may be punished. The Criminal Code, Article 7, also prescribes a series of other cases in which the Brazilian jurisdiction is extended over perpetrators of offences committed abroad.[27]

As stated above PL 2.858/2000 intends to criminalise any *non bona fide* involvement in a criminal organization.

[27] See Presidência da República. Subchefia de Assuntos Jurídicos. www.planalto.gov.br/ccivil_03/Decreto-Lei/Del2848.htm

1.11 Paragraph 2 (e) of the Resolution requires States to "ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice". Brazil first report states, in relation to paragraph 2(c), that, "if the country cannot extradite an accused (because he or she is a national, for example), it must prosecute him or her... ('No safe heaven principle')." It appears from the succeeding comments in that report, and from related comments in the second report, in relation to the same sub-paragraph, that the principle does not apply in all cases coming before the Brazilian courts, but depends on the applicability to a particular case of various bilateral and multilateral treaties. The CTC would be grateful for an indication of:

- ***the extent, and basis, of the applicability of that principle to the offences set forth in the 12 international conventions and protocols relating to terrorism and to other offences contemplated by the Resolution; and***

- ***The action that Brazil intends taking to ensure full implementation of the Resolution in that regard.***

Article 5, LI, of Brazilian Constitution establishes that "no Brazilian shall be extradited, except the naturalized ones in the case of a common crime committed before naturalization, or in the case there is sufficient evidence of participation in the illicit traffic of narcotics and related drugs, under the terms of the law." That command has no exceptions.

In accordance with the principle "*aut dadere aut iudicare*", as stated in item 1.12, the Criminal Code extends Brazilian jurisdiction over perpetrators of offences described in international conventions to which Brazil is a part of as soon they are found in the national territory. Under Brazilian law, anyone who has committed terrorist acts abroad and is found in the national territory may be punished.

1.12 In the light of the requirement of sub-paragraph 3 (g) of the Resolution that States ensure that claims of political motivation are not grounds for refusing extradition of alleged terrorists, the CTC would welcome clarification of the basis on which terrorist offences are not taken to be political offences. Is direct provision to that effect made by act 6815 of 1980, as stated in the first report in relation to sub-paragraph 2 (e), or is it the result of judicial interpretation, as indicated in the comments in the supplementary report in relation to sub-paragraph 3 (g)? In either case, how is the exception reconciled with article 5 of the Constitution?

Article 5, LII, of Brazilian Constitution states that "extradition of a foreigner on the basis of political or ideological crime shall not be granted". Brazilian Supreme Court is to verify in any concrete situation if the alleged offence constitutes principally a common penal law offence (article 77, Act 6815/80). All offences that, by international treaty, Brazil obliges itself to suppress are incorporated in domestic legislation by ratification and guide judgements as any other positive law (Criminal Code, Article 7, II, "a").

At present, the predominant understanding of the higher courts is that anti-social offences, such as those described in paragraph 3, Article 77, constitute no political crime (attempts against any authorities as well as acts of anarchism, terrorism, sabotage, abduction, war propaganda, and violent processes of subversion of order).

PL 6.764/2002 intends also to deal with the matter mentioned in the question. By defining the crime of terrorism it is likely to avoid the possibility of terrorist acts be considered political offences (also see 1.8).

1.13 Paragraph 3 of the Resolution calls upon all states to become parties to all the international conventions and protocols relating to terrorism as soon as possible. Please provide a report on the progress made by Brazil in becoming a party to the Conventions and Protocols to which it is not yet a party.

The Brazilian Government is taking the necessary steps to incorporate in its internal legislation the 12 international conventions and protocols relating to terrorism negotiated under the auspices of the United Nations and the AEIA. The Government has already ratified 9 Agreements. Three of them are still being examined in Congress, in the House of Representatives:

- International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.

- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988

- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.